

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELASTICSEARCH, INC., et al.,

Plaintiffs,

v.

FLORAGUNN GMBH,

Defendant.

Case No. [19-cv-05553-YGR](#) (AGT)

**ORDER TO SUBMIT DECLARATION
REGARDING SANCTIONS DISPUTE
AND SETTING DISCOVERY
HEARING**

Re: Dkt. No. 100

On May 4, 2021, the Court found that floragunn freelance programmers Mikael Gustavsson and Sergii Bondarenko were floragunn’s managing agents and ordered floragunn to produce both witnesses for remote video deposition by May 14. ECF No. 97. The Court denied Elastic’s request for non-appearance sanctions without prejudice to renewal if either witness failed to appear. *Id.* Elastic noticed the programmers’ depositions for May 12 and 13; neither witness appeared; and on May 21, after meeting and conferring with floragunn, Elastic renewed its Rule 37 sanctions request via joint letter. ECF No. 100.

In the joint letter, floragunn argues that sanctions are not warranted because it “has used its best efforts to compel the witnesses to appear” for a deposition—including “threaten[ing] termination of their freelance contracts if they did not appear”—“but they have refused.”¹ *Id.* at 6. floragunn represents that it “has consulted with German labor counsel, and will be sending Messrs. Bondarenko and Gustavsson letters the week of May 23, 2021 terminating their respective

¹ floragunn emailed each witness on May 6, 2021, advising that if they declined to appear for a remote video deposition on or before May 14, “floragunn will have no choice but to terminate your freelance contract”; those emails and the witnesses’ respective responses confirming their refusal to appear are attached to the joint letter as Exhibit A (Gustavsson) and Exhibit B (Bondarenko).


1 contracts with floragunn. In accordance with the terms of the [witnesses'] freelance agreements
2 and German law, floragunn is required to provide four weeks notice of termination.” *Id.*

3 Elastic responds that “floragunn’s purported threats to terminate its agreements with
4 Messrs. Bondarenko and Gustavsson (following the Court’s May 4 order) are hollow: floragunn
5 does not claim that it did terminate them or that floragunn does not employ them.” *Id.* at 3.
6 According to Elastic, “both [witnesses] continue to perform work for floragunn: after their
7 nonappearances last week, Mr. Bondarenko has made over a dozen commits to Search Guard’s
8 code and Mr. Gustavsson has continued to open ‘issues’ on Search Guard’s public code
9 repository.” *Id.* (emphasis omitted).

10 By **June 4, 2021**, floragunn shall submit a declaration confirming (1) the date floragunn
11 gave each witness written notice of termination and (2) the effective date of termination of each
12 witness. A hearing on this dispute (ECF No. 100) as well as the parties’ other pending discovery
13 dispute (ECF No. 101-3) will be held via Zoom on **June 11, 2021, at 10:00 a.m.**

14 **IT IS SO ORDERED.**

15 Dated: May 28, 2021

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ALEX G. TSE
United States Magistrate Judge